



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
 ROBERT C. THOMAS and MARILYN THOMAS)

Appearances :

For Appellant: Robert C. Thomas, in propria persona

For Respondent: Burl D. Lack, Chief Counsel;
Cleo Gray, Junior Counsel

O P I N I O N

This appeal is made pursuant to Section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Robert C. Thomas and Marian Thomas for refund of personal income tax in the amount of \$23.45 for the year 1950.

Appellant Robert C. Thomas is a civilian employee of the United States Public Health Service. He came to California in January of 1950 on assignment to a research project which, although of uncertain duration, was expected to continue for a period of years. His wife, Appellant-Marian Thomas, joined him in June of the same year. In October, 1950, they commenced construction here of a home which they occupied in February, 1951. Mr. Thomas' salary was paid by the United States Public Health Service Environmental Health Center in Cincinnati, Ohio, and by the University of California.

Appellants did not file a personal income tax return for 1950 within the time specified by the Personal Income Tax Law. In 1952, at the request of the Franchise Tax Board, they filed a joint-return for the year 1950 and paid under protest the sum of \$23.45, representing self-assessed tax and interest. Subsequently, on April 6, 1953, an amended return was filed decreasing the amount of taxable-income by eliminating salary earned prior to January 15, 1950, the date on which Mr. Thomas began his California assignment.

The amounts of income reported on the amended return were as follows:

Salary paid by United States Public Health Service	\$5,384.50
Salary paid by University of California	583.50
Dividends	<u>111.50</u>
Total	\$6,079.50

The Franchise Tax Board recomputed the tax and interest upon the basis of the income reported on the amended return and, for the stated reason that most of the income was from California sources and taxable even if Appellants were nonresidents, added a delinquency penalty in the amount of \$4.70. As recomputed, the Franchise Tax Board determined the amount of tax, penalty and interest at \$25.31, leaving a balance of \$1.86 which is still unpaid.

Although Appellants claimed a refund for the entire amount paid under protest for the year 1950, they now apparently concede that they became residents of California and amenable to its tax laws as of the time Mrs. Thomas and the children arrived in this State in June of that year. Considering the purpose and contemplated length of his stay in California, we have no doubt that Mr. Thomas became a resident of the State upon his arrival here on January 15, 1950. For the purpose of this appeal, however, we are not called upon to decide that issue.

It is settled law that the source of income from personal services is in the place where the services are performed, without regard to the place of residence of the taxpayer or the place at which or from which payment is made. 8 Mertens, Law of Federal Income Taxation, pp. 306-307; California Personal Income Tax Regulation, 17211-17214(c-e).

As determined by the Franchise Tax Board the tax, penalty and interest on income attributable solely to personal services performed by Mr. Thomas within this State during the year 1950 is the aggregate amount of \$23.87, which exceeds the amount paid by Appellants and now claimed as a refund. Accordingly, unless the penalty for failure to file a timely return was erroneously assessed, the action of the Franchise Tax Board in denying the claim for refund must be sustained.

Without regard to the merits of Appellants' belief that they were nonresidents of California during the entire year 1950, it would seem that the exercise of ordinary prudence would have led them to make inquiry concerning their liability for a tax arising from the receipt of salaries earned while employed in

this State. This seems particularly true with regard to compensation paid by the University of California. In the absence of a showing of reasonable cause for their neglect, we are of the opinion that the assessment of a penalty for failure to file a timely return was a proper exercise of the authority vested in the Franchise Tax Board under Section 18681 of the Revenue and Taxation Code,

ORDER

Pursuant to the views expressed in the opinion of the Board on file in this proceeding and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 19060 of the Revenue and Taxation Code that the action of the Franchise Tax Board in denying the claim of Robert C. Thomas and Marian Thomas for a refund of personal income tax in the amount of \$23.45 for the year 1950 be and the same is hereby sustained,

Done at Sacramento, California, this 20th day of April, 1955, by the State Board of Equalization,

J. H. Quinn, Chairman

Paul R. Leake, Member

Robert E. McDavid, Member

Geo. R. Reilly, Member

Robert C. Kirkwood, Member

ATTEST: Dixwell L. Pierce, Secretary